IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 5848 of 1995

Between:

M/s.Vinayak Steels Limited, rep. by its Managing Director

Vishambharlal Pasari, 4-1-842/6, Diamond complex,

Jawaharlal Nehru road, Hyderabad-500 001. … Petitioner

AND

1)A.P. State Electricity Board, rep. by its Secretary

Vidyut Sdoudha, Somajiguda, Hyderabad 500 049.

2)The Chief Engineer (Electricity), Hyderabad zone

A.P.S.E. Board, Mint Compound, Hyderabad.

3)The Superintending Engineer, Assessments(special),

A.P.S.E. Board, Vidyut soudha, Somajiguda, Hyderabad.

4)The Superintending Engineer, operation circle, A.P.S.E. Board,
Mahaboobnagar.

5)The Superintending Engineer, D.P.E., A.P.S.E. Board,
Vidyut Soudha, Somajiguda, Hyderabad.

6)The Senior Accounts Officer, Operation circle,
A.P.S.E. Board, Mahaboobnagar.

7)The Assistant Divisional Engineer (operation),
A.P.S.E. Board, Shadnagar. … Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue a Writ of Certiorari or other appropriate writ, order or direction calling for records relating to and quash the order of the third respondent Superintending Engineer, Assessments(special), A.P.S.E. Board, Hyderabad in Order No. SEA/Spl./HYD/F.MDNR.3/2761/94, dated 21.11.1994 as modified by the order of the second respondent, the Chief Engineer, Electricity, Hyderabad zone, A.P.S.E. Board, Hyderabad in Lr. No. CEE/HZ/SMRT/A.15/94/D.No.581/95, dated 6.3.1995.

Counsel for the Petitioner: MR. D.V.NAGARJUNA BABU

Counsel for the Respondents : SMT.M.VINOBHA DEVI, S.C. for A.P.Transco.

The Court made the following :

O R D E R :

Heard the learned counsel appearing for the petitioner and Smt. M.Vinobha Devi, learned standing counsel appearing on behalf of the respondents.

The petitioner herein, which is a public limited company and an industrial unit manufacturing M.S. ingots and runner risers, filed this Writ Petition, *inter alia*, seeking to assail the correctness of the assessment made by the third respondent as per the proceedings dated 21.11.1994, as modified by the proceedings dated 06.03.1995 of the second respondent.

The case of the petitioner, in brief, is that even in the year 1990, alleging some irregularities, there being a disconnection of power supply to its unit and subsequent restoration thereof on a finding that there was no such irregularity committed by the petitioner. The present impugned proceedings are initiated in pursuance of the inspection alleged to have been conducted on 20.03.1991 whereby the petitioner is imputed with allegations that though the seals of the meters are found to be intact, however, it was found that an electronic gadget consisting of one PT, two coils of rating 12 V.D.C. and an electronic device are found connected in ‘R’ & ‘Y’ potentials of the meter before the test block behind the meter board. It was further alleged that the petitioner is indulging in theft of energy by the said

artificial means suppressing the energy to be recorded in the meter possibly in collusion with the A.P.S.E. Board staff. Though a provisional assessment has been made followed by due procedure and notice and considering the explanation, final assessment was also followed holding that the petitioner is responsible for such existence of device. On further appeal, the said findings were confirmed and ultimately assessing theft of energy to an extent of Rs.40,57,675-20 ps. and a sum of Rs.300/- towards supervision charges.

The learned counsel appearing on behalf of the petitioner submits that at both the levels i.e. primary and in appeal, a specific contention has been raised for supply of relevant material which formed part of the record those in regard to the earlier inspection and replacement of the meters, etc. and for cross-examination of the concerned inspecting officer and other officers including panchayatdars. Both the authorities did not accede to the same and it was found not necessary having regard to the fact that such device was found to be in existence for which no explanation is forthcoming from the petitioner. Thus, confronted with the findings of both the authorities, it is the contention of the petitioner that such denial of opportunity both in regard to supply of material and also not allowing the cross-examination of the officials, not only violates the mandate and principles of natural justice, but also is in the teeth of principles laid down by Division Bench of this Court in Writ Petition No. 7586 of 1999, dated 16.06.1999. Hence, the Writ Petition.

The learned standing counsel appearing on behalf of the respondents sought to sustain the impugned proceedings on the ground that in spite of the allegations as to the collusion of the staff of the then Board, the fact remains that there exists a device for which there is no explanation forthcoming and therefore, the impugned assessment is totally valid.

Considering the submissions made and on perusal of material, the question which falls for consideration in this Writ Petition is as to whether the denial in regard to supply of documents and not allowing the petitioner to cross-examine the concerned, in any way vitiate the entire proceedings ?

There is no dispute to the chequered events leading to inspection on 20.03.1992, which was preceded by another inspection and disconnection on certain allegations against the petitioner, which was subsequently restored having found that the petitioner can not be blamed therefor. However, in the impugned inspection, it is found that a device was found to be existing whereby the energy is being pilfered for which the possible collusion with the staff of the then Board can not be ruled out. Having regard to these chequered events and also the very allegations as found against their own staff, it can not be said that the petitioner alone is to be blamed ultimately and there is no explanation forthcoming on behalf of the respondents as to any action taken against the officer against whom the collusion is alleged. No doubt, there exists a device which is stated to be responsible for theft of energy. However, the involvement of the officer of the then Board, can not be ruled out. The petitioner alone can not be blamed nor can he be imposed fine of such heavy amounts. The assessment period now is restricted from 09.01.1991 to 20.03.1991, for which entire basis is only a device as found during the inspection conducted on 20.03.1991.

In view of the fact that there is a serious allegation of involvement of staff of the then Board and admittedly no such documents have been forthcoming to the assistance of the petitioner and further no permission to cross-examine any of those officers concerned with such inspection and panchanama, etc. has been granted, it can not be said that there is a due and proper enquiry. As observed in the aforesaid decision of Division Bench of this Court, it is a fit case

where there should have been a proper enquiry with sufficient opportunity provided to the petitioner, including acceding to the twin requests made by the petitioner in respect of supply of documents and also cross-examination of the concerned officials. It is also now represented that out of total assessed amount of Rs. Rs.40,57,675-20 ps., the petitioner has made substantial deposits. In view of the same, no prejudice will be caused by conducting an enquiry afresh with opportunity to the petitioner.

In the circumstances, the Writ Petition is allowed. The impugned order dated 06.03.199 is set aside and the matter is remitted back to the second respondent-appellate authority for conducting the enquiry afresh after giving sufficient opportunity to the petitioner and acceding to his requests made by the petitioner in regard to the supply of documents and cross-examination of the concerned officials including panchayatdars. No costs.

(B.Prakash Rao, J.)

09.12.2004

DRK

The Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on

Thursday, the ninth day of December, Two thousand and four.

.....Registrar

//True Copy//

Section Officer.

Copy to:

1) The Secretary, A.P. State Electricity Board,

Vidyut Sdoudha, Somajiguda, Hyderabad 500 049.

2)The Chief Engineer (Electricity), Hyderabad zone

A.P.S.E. Board, Mint Compound, Hyderabad.

3)The Superintending Engineer, Assessments(special),

A.P.S.E. Board, Vidyut soudha, Somajiguda, Hyderabad.

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6)The Senior Accounts Officer, Operation circle,
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7)The Assistant Divisional Engineer (operation),

A.P.S.E. Board, Shadnagar.

8) Two CD copies.